

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director
and Attorney-in-Chief

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

September 18, 2020

BY ECF/EMAIL

Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

Re: United States v. Ricardo Garcia Diaz, 20 Cr. 140 (LAK)

Honorable Judge Kaplan:

I write on behalf of my client, Ricardo Garcia Diaz, to withdraw his Motion to Suppress Physical Evidence and Statements, ECF No. 13. I respectfully request that the Court adjourn the appearance presently scheduled for Tuesday, September 22, 2020 at 4:30 p.m. to a date and time of convenience to the Court during the week of Monday, October 26, 2020 or thereafter. The parties consent to the exclusion of time under the Speedy Trial Act through the next conference date scheduled by the Court in anticipation of conducting a safety-valve proffer and requesting a referral to magistrate court for a change-of-plea hearing. In addition, I respectfully request that the Court cancel its request for Mr. Garcia Diaz's production from the Metropolitan Correctional Center (MCC) on September 22, 2020.

In his Motion to Suppress, filed August 24, 2020, Mr. Garcia Diaz argued that he was arrested without probable cause by agents of the Drug Enforcement Administration on February 4, 2020 and that he did not knowingly and voluntarily waive his Fifth Amendment privilege against self-incrimination. In light of new factual allegations about agents' decision to arrest Mr. Garcia Diaz set forth—for the first time—in the Government's opposition brief and new information produced in discovery after the motion was filed, the analysis has changed. Accordingly, and in an effort to expeditiously resolve this matter, Mr. Garcia Diaz now wishes to withdraw his motion.

As noted above, I therefore request that the Court adjourn this matter to a date on or after October 26, 2020 to allow the parties to continue their efforts to reach a disposition. In addition, I request that the Court cancel its prior order for Mr. Garcia

Hon. Lewis A. Kaplan
United States District Judge

September 18, 2020
Page 2 of 2

Diaz to be produced in person on September 22, 2020 in order to avoid unnecessary hardship for Mr. Garcia Diaz. If he is produced, he likely will be forced to undergo a substantial quarantine in conditions of strict isolation upon his return to the MCC.

Thank you for your consideration of these requests.

Respectfully submitted,

/s/ Ariel Werner

Ariel Werner
Assistant Federal Defender
212.417.8770

cc: Thomas John Wright, Assistant U.S. Attorney

The defendant's motion to suppress [DI 13] is withdrawn. The matter is adjourned until October 20, 2020 at 3:30 pm. Mr. Mohan will cancel the request that the defendant be produced in court on September 22, 2020. Any plea is referred to a magistrate judge.

Time is excluded from now to and including October 20, 2020 for Speedy Trial Act purposes. The Court finds that the interests of justice served thereby, including the defendant's wish to continue efforts to reach a negotiated disposition, outweigh the interests of the public and the defendant in a speedy trial.

SO ORDERED


LEWIS A. KAPLAN, USDJ

9/18/2020